

(1999) 11 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 17807 of 1993

Geo Seafoods

APPELLANT

Vs

Additional Sales Tax Officer IV and Another

RESPONDENT

Date of Decision : 10-11-1999

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17, 17(6)
Kerala General Sales Tax Rules, 1963 — Rule 32(21)

Citation : (2000) 119 STC 236

Hon'ble Judges : S. Sankarasubban, J; Ar. Lakshmanan, J

Bench : Division Bench

Advocate : P.C. Chacko and Roy Chacko, for the Appellant; V.V. Asokan, Special Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban. J.

1. Petitioner is Geo Seafoods. It is a proprietary concern with effect from December 1, 1989. Prior to that date, it was a firm in which the present proprietor was the managing partner. The firm was registered under the Kerala General Sales Tax Act. The firm was dissolved in the year 1989. Afterwards, the business was being continued as a proprietary concern with fresh registration number.

2. The firm had filed returns under the Kerala General Sales Tax Act, 1963 (hereinafter referred to as "the Act") for the periods from 1974-75 to 1989-90. But they had not been finalised so far. Petitioner received a notice dated June 2, 1993 from the Sales Tax Officer, Second Circle, Mattancherry, Kochi, directing it to produce the accounts and other documents relating to the periods from 1974-75 to 1992-93 for finalisation of the assessment. Exhibit P1 is the copy of the notice. It is stated in the notice that since the documents were not produced, the turnover will be determined to the best of judgment. Petitioner gave reply to exhibit P1 by means of exhibit P2. In exhibit P2, it is stated that the accounts for

the years from 1974-75 to 1976-77 were with the Income Tax Department as a result of search and seizure made by it. The Income Tax Department had taken away all the records such as bills, invoices, vouchers, agreements, etc. Petitioner does not have the account records up to the year 1988-89. Petitioner brought to the notice of the authorities Rule 32(21) of the Kerala General Sales Tax Rules, 1963 (hereinafter referred to as "the Rules"), which reads thus :

"Accounts maintained by dealer together with all vouchers, bills, declarations, way bills, and delivery notes relating to stocks, deliveries, purchases, output and sales shall be preserved by them for a period of four years after the close of the year to which they relate and shall be kept at the place of business mentioned in the certificate of registration."

Exhibit P3 reply was given in addition to exhibit P2. Subsequently, by exhibit P4 dated December 13, 1993, the petitioner was again informed by the Sales Tax Officer to produce the books of accounts for the years from 1986-87 to 1992-93. Exhibits P5(a), P5(b) and P5(c) are the best judgment assessments with regard to the periods from 1974-75 to 1976-77. It is challenging exhibits P1, P4, P5(a), P5(b) and P5(c) with regard to the periods from 1974-75 to 1976-77 that the original petition is filed.

3. Subsequently the original petition was amended. By the amended petition, a prayer was included for a declaration that the impact of Section 17(6) of the Act read along with its second proviso was only to keep alive the assessments pending completion for a period of four years prior to the commencement of the said section on April 1, 1993 and to issue a declaration that the second proviso to Section 17(6) of the Act was unconstitutional and void.

4. The main contention urged by the counsel for the petitioner is that it is the duty of the assessing authority to complete the assessments in a reasonable time. Section 17 of the Act did not stipulate originally any period within which the assessments should be completed. But the petitioner takes the contention on the basis of various decisions of this Court that in such cases, within a reasonable time, the assessments should be completed. If there is long delay in the completion of the assessments, then the entire assessments will be bad and likely to be struck down. By the Finance Act, 1993, the Legislature amended Section 17 of the Act and included Section 17(6). u/s 17(6), the maximum period of four years was fixed as the limit for completing the assessments. But a proviso was added to this that the assessment proceedings which were pending at the commencement of the Finance Act can be completed within four years. Petitioner contends that the respondents cannot take protection under the second proviso to sustain the assessments, because even by the time when the Finance Act came into force, the assessments have become illegal and barred in view of the long delay in completing the assessments. Petitioner relied very heavily the decisions reported in *Iswara Bhat Vs. Commissioner of Agricultural Income Tax*, , *The State of Gujarat Vs. Patil Raghav Natha and Others*, for the proposition that the assessments should be completed within a reasonable time.

5. A counter-affidavit was filed on behalf of the first respondent, viz., by the Assistant Secretary (Law), Office of the Deputy Commissioner (Law), Board of Revenue (Taxes), Ernakulam. So far as the present case is concerned, we are concerned with three assessment years, viz., 1974-75, 1975-76 and 1976-77. The counter-affidavit states that the petitioner had filed returns for the year 1974-75 on April 29, 1975. Form 50 notice was issued to the petitioner on October 28, 1975 requesting the petitioner to produce the books of accounts in support of the return filed by it. On November 6, 1975 another notice was issued posting the case for hearing on November 14, 1975. The accounts were produced on November 20, 1975 by the petitioner's authorised representative C.V. Kuruvila. A notice was again issued on February 9, 1976 calling the petitioner to file certain statements. The notice was served on Kuruvila on February 12, 1976. On February 20, 1976 he applied for 10 days time and accordingly, the case was adjourned to March 7, 1976. The statements were filed on March 7, 1976, but the assessments could not be completed. The counter-affidavit further states that again form 50 notices were issued on February 11, 1987, January 10, 1992 and June 17, 1992, but without response. Again on December 10, 1993 a notice u/s 17(3) of the Act was issued. For the period 1975-76, the petitioner filed the return on April 30, 1976. Notice in form 50 was issued to the petitioner on September 3, 1976 posting the case for hearing on September 25, 1976. Then there was a lull. A pre-assessment notice was issued on December 10, 1993 proposing to assess the petitioner on a turnover of Rs. 1,40,25,533.93. For the year 1976-77, the petitioner had filed the return on April 27, 1977. The notice in form 50 was issued on January 24, 1980. The assessee requested for time. After 13 years, on December 10, 1993 a pre-assessment notice was issued proposing to complete the assessment at best judgment. It is further submitted in the counter-affidavit that the provision contained in Rule 32(21) for the preservation of the accounts for a period of four years after the close of the year to which they relate cannot come to the rescue of an assessee. Respondent further takes a contention that under the second proviso to Section 17(6) of the Act, the department is entitled to continue and complete the assessment proceedings which were pending on the date on which the Act came into force.

6. Petitioner filed a reply affidavit. In paragraph 3 of the reply affidavit, it is stated that under the provisions of the Act before its amendment in 1993, there was no time-limit for completion of the assessment. The time-limit was fixed for the first time as per the Kerala Finance Act, 1993 (Act 13 of 1993). By the amendment, Section 17(6) was introduced with two provisos. The proviso came into force with effect from April 1, 1993. The Bill for the purpose was introduced in the State Legislature on 27th March, 1993 as Bill No. 64. The Kerala Finance Bill, 1993 (Bill No. 64) Act came into force on July 29, 1993. The reason for the amendment as stated in the Bill is to give effect to financial proposals of the Government for the year 1993-94. Before the Act was passed, a division Bench of this Court in the decision reported in *Iswara Bhat Vs. Commissioner of Agricultural Income Tax*, , held that the initiation of assessment proceedings and

conclusion of the same should be within a reasonable time. According to the petitioner, it was never the intention of the Legislature to get over the dictum of the aforesaid division Bench decision. According to the petitioner, the second proviso can be made applicable only to those proceedings, which were validly pending. Those proceedings, which have become barred in view of the decision reported in *Iswara Bhat Vs. Commissioner of Agricultural Income Tax*, cannot be salvaged by way of amendment. Petitioner had, in fact, produced the accounts for the year 1974-75. But no effective steps were taken till 1993. There was no delay on the part of the petitioner. Respondents would have completed the proceedings within a reasonable time.

7. We heard Shri P.C. Chacko, Senior Counsel for the petitioner and Shri V.V. Asokan, learned Government Pleader for the State of Kerala. Shri Chacko contended that the assessment proceedings have been pending for nearly 16 to 18 years when the Finance Act, 1993 came into force. According to him, it was because of the inaction on the part of the department that the assessments were not completed. There was no violation on the part of the petitioner. It is one of the cardinal principles that the proceedings should be concluded within a reasonable time. The amendment Act itself has prescribed only four years time and if that is taken as a yardstick, the pendency for nearly 16 years cannot be justified and the procedure will not be a fair procedure and hence, the amendment Act cannot save the proceedings. On the other hand, Shri V.V. Asokan contended that it is true that there was some delay in completing the assessment, But merely because of the delay, it cannot be said that the assessment proceedings are illegal. The Legislature took note of this position and has fixed a time-limit with regard to such proceedings. The assessments were completed within the time fixed by law, Hence, the learned Government Pleader contended that there is nothing illegal with regard to the assessments.

8. Before we discuss the various aspects, we shall have a look into the facts of this case. This original petition relates to the assessment years 1974-75, 1975-76 and 1976-77. For all these years, it is found that returns were filed on April 29, 1975, April 30, 1976 and April 27, 1977, So far as the year 1974-75 is concerned, the books of accounts were produced on November 20, 1975 and the statement was also filed on March 7, 1976. Thereafter, there has been long delay on the part of the assessing authority. It was only on February 11, 1987 that another notice in form 50 was issued. Then notices dated January 10, 1992 and June 17, 1992 were issued and finally the pre-assessment notice was issued on December 10, 1993. For the year 1975-76, it is found that the returns were filed on April 30, 1976. The case was posted on September 25, 1976. Thereafter, there was no proceedings excepting the pre-assessment notice on December 10, 1993. For the year 1976-77, the returns were filed on April 27, 1977. The notice in form 50 was issued only on January 24, 1980. After that the only other proceeding is the pre-assessment notice dated December 10, 1993. This factual aspect shows that there has been long delay in completing the assessment proceedings. In the counter-affidavit, nothing is stated to show that there was

any default on the part of the assessee or there was any impediment on the part of the assessing authority to complete the assessment within a reasonable time.

9. Section 17 of the Act deals with assessment. As already stated, originally, this provision did not contain any time-limit for completing the assessment. u/s 17(1) of the Act, every dealer, who is liable to pay tax under this Act shall submit such return or returns relating to his turnover in such manner and within such period as may be prescribed. Under Sub-section (2) of Section 17, if the assessing authority is satisfied that any return submitted under Sub-section (1) is correct and complete, it shall assess the dealer on the basis thereof. Sub-section (3) of Section 17 speaks of a situation when no return is filed or the assessing authority is not satisfied with the return filed. In that case, the assessing authority can assess to the best of its judgment after making such enquiries and taking into account all relevant materials. Before finalising the assessment, an opportunity has to be given to the assessee. Thus, if the returns filed by the assessee are complete, the assessments can be completed immediately. According to the officer, the assessment is not enabled to make enquiries and pass assessment orders. Normally this proceeding need not take much time, unless the assessee protracts the matter. So far as the facts of this case are concerned, we don't find any conduct on the part of the assessee, which has protracted the proceedings. The question arises whether in such circumstances, the authorities can keep the assessment proceedings in cold storage and take it out after a long lapse of time.

10. u/s 34 of the Agricultural Income Tax Act, the Commissioner has got suo motu power to revise an order of assessment passed. That section did not prescribe any time-limit within which either the power is to be initiated or the exercise of the power is to be completed. In *Iswara Bhat Vs. Commissioner of Agricultural Income Tax*, , the division Bench of this Court had occasion to consider the question whether the power of the Commissioner, u/s 34 of the Agricultural Income Tax Act is not precluded by any limit regarding time. In that case, the power of revision was initiated within a reasonable time. But the order in the revision was passed 13 years later. The question arose whether that order is fair and reasonable. The division Bench then referred to the decisions reported in *The State of Gujarat Vs. Patil Raghav Natha and Others*, , *S.B. Gurbaksh Singh Vs. Union of India (UOI) and Others*, and *Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others*, and also *Nelliampathy Tea and Produce Co. Ltd. Vs. Commissioner of Agricultural Income Tax*, and held that the statutory body should act within a reasonable time. This Court also took into account the *Wednesbury* principles reported in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1947] 2 All ER 680 . It was argued before that Bench that time-limit is only with regard to the initiation of proceedings and not with regard to the conclusion of the proceedings. The judgments of certain other High Courts were also brought to the notice to show that the proceedings which started in time cannot be said to be invalid, because the proceedings were concluded very late. The division Bench rejected that contention and said that there was no scope for such a dichotomy. The division Bench is of the view that a

fair and reasonable procedure envisages even the termination of the proceedings without delay.

11. In *The State of Gujarat Vs. Patil Raghav Natha and Others*, , the Supreme Court was dealing with Section 65 of the Bombay Land Revenue Code, which gives power of revision to the Commissioner. It held that the power has to be exercised within a reasonable time. *Bharat Steel Tubes Ltd. and Another Vs. State of Haryana and Another*, ; *Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others*, was a case under the Medicinal and Toilet Preparations (Excise Duties) Rules. The question was whether Rule 12 of the Rules which gives power of assessing the escaped assessments enables the authority to exercise that power at any time. The court held that the power has to be exercised within a reasonable time. In another decision reported in *Dr. Thomas Varghese Vs. State of Kerala*, , a division Bench again reiterated the proposition and held that the revisional power u/s 34 has to be exercised within a reasonable time. Learned Government Pleader cited before us the decision in *The Sales Tax Officer Vs. Sankaran*, . That was a case of remand and hence, according to us, that decision does not apply to the facts of this case. *Bharat Steel Tubes Ltd. and Another Vs. State of Haryana and Another*, is another case where question arose whether the assessment proceedings should be completed within a reasonable time. The Supreme Court held that even though no time-limit is prescribed, the assessment has to be completed within a reasonable time. What is the reasonable time is also depends upon the facts and circumstances of each case.

12. Thus on a perusal of the above decisions, it is clear that the repository of the statutory power should be reasonable, that means that the Damocles" sword should not hang endlessly, at the caprice of any statutory authority. The order passed by the statutory authority should be reasonable. It shall be rational and fair. The Revenue should be able to demonstrate that there were circumstances beyond control or other supervening events or insurmountable difficulties, for not completing the proceedings. The statutory power conferred was used in the right and proper way. As was observed by Paripoornan, J. in *Nelliampathy Tea and Produce Co. Ltd. Vs. Commissioner of Agricultural Income Tax*, in a system based on rule of law, there is no unfettered or untrammelled discretion in any statutory or public authority. In the case at hand, when the Finance Act came into force, already the assessment proceedings had been pending for more than 16 to 18 years. The counter-affidavit does not give any reason for this unexplained delay. It is seen from the pleadings in this case that the returns were filed in time and that the petitioner had also produced account books earlier. But there was inaction on the part of the authority for a long time, viz., nearly 15 years, to continue the proceedings. No justification is forthcoming from the assessing authority. Hence, we are of the view that the proceedings have become stale and irrational at the time when the Finance Act, 1993 came into force. These proceedings were kept in cold storage not intended to be taken out.

13. The next question is whether this proceedings can be saved by the amendment brought by the Finance Act, 1993, since the proceedings were pending at the time of commencement of the Act. As already stated, before it was amended by the Finance Act, no time-limit was prescribed. By Finance Act 13 of 1993, Sub-section (6) of Section 17 was ordered. It is as follows :

"(6) Any assessment under this section shall be completed within a period of four years from the expiry of the year to which the assessment relates :

Provided that this time-limit shall not apply in the case of dealers who, being liable to get themselves registered as provided for under the Act and the Rules made thereunder have failed to do so:

Provided further that all assessments pending as on the 1st day of April, 1993 shall be completed within a period of four years from the date of publication of the Kerala Finance Act, 1993."

Subsequently, the second proviso was amended directing that all assessments relating to the years up to and including the year 1994 shall be completed on or before September 30, 1998. This amendment was made in the Finance Act of 1998, which came into force on July 29, 1998. Counsel for the petitioner submitted that so far as the proceedings in question in the present case are concerned, they cannot be saved by the second proviso. Learned counsel submitted that the proviso does not revive the assessments which have already become barred in view of the long delay taken in disposing of the same. Learned counsel also submitted that it does not appear from the proviso that it has got retrospective effect. Further, counsel submitted that the dictum in the decision reported in *Iswara Bhat Vs. Commissioner of Agricultural Income Tax*, , has been accepted for a long time and the Legislature has not passed any legislation taking away the applicability of that decision. Further he submitted that it cannot be prescribed that the Legislature will revive a thing, which has been closed unless from the statute itself it has become clear that it reopens closed transactions. On the other hand learned Government Pleader submitted that it cannot be disputed that the proceedings in the case was pending on the date on which the Amendment Act came into force. If that be so, then the proviso will apply to all cases. The word "pending" in the proviso cannot be interpreted to be only those cases which are pending validly.

14. Both sides cited a number of decisions and tried to convince their propositions. As we have already stated, if the Amendment Act had not been enacted, the proceedings in the present case would have been held to be unreasonable and void on the day on which the Finance Act, 1993 came into force. The question is whether such proceedings are saved by the amending Act. In *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, , it was observed thus :

"The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in

litigation at the time when the Act was passed."

In *Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others*, , the Supreme Court laid down certain principles with regard to the ambit and scope of an amending Act and its retrospective operation, which state thus :

"(i) A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning, and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal, even though remedial, is substantive in nature.

(iii) Every litigant has a vested right in substantive law, but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates a new rights and liabilities, shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

15. In *Statutory Interpretation* by Francis Bennion, 8th Edition, at page 443, it has been held as follows :

"Unless the contrary intention appears, an enactment is presumed not to be intended to have a retrospective operation. The essential idea of a legal system is that current law should govern current activities.....

If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it."

At page 445, it was observed as follows :

"It is a general principle of legal policy that no one should suffer detriment by the application of a doubtful law. The general presumption against retrospectivity means that where one of the opposing constructions of an enactment would, without clear words justifying it, impose an ex post facto law, that construction is necessarily doubtful."

Regarding the provisions of limitation, the author observed at page 447 as follows :

Provisions laying down limitation periods fall into a special category. Although

prima facie procedural, they are capable of effectively depriving persons of accrued rights. From the point of view of retrospectivity, they therefore need to be approached with care."

Lord Brightman said in *Yew Bon Tew v. Kenderaan Bas Mara* [1982] 3 All ER 833 that a retrospective enactment inflicts a detriment for their purpose--

".....if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past".

In *The Ahmedabad Mfg. and Calico Printing Co., Ltd. Vs. S.C. Mehta, Income Tax Officer and Another*, , it was observed as follows :

"A statute which is not declaratory of a pre-existing law nor a matter relating to procedure but affects vested rights cannot be given a greater retrospective effect than its language renders necessary, and even in construing a section which is to a certain extent retrospective, the line is reached at which the words of the section cease to be plain."

In *S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company*, , it was observed as follows :

"As we have already pointed out, the right to commence a proceeding for assessment against the assessee as an agent of a non-resident party under the Income Tax Act before it was amended, ended on March 31, 1956, It is true that under the amending Act by Section 18 of the Finance Act, 1956, authority was conferred upon the Income Tax Officer to assess a person as an agent of a foreign party u/s 43 within two years from the end of the year of assessment. But authority of the Income Tax Officer under the Act before it was amended by the Finance Act of 1956 having already come to an end, the amending provision will not assist him to commence a proceeding even though at the date when he issued the notice it is within the period provided by that amending Act. This will be so, notwithstanding the fact that there has been no determinable point of time between the expiry of the time provided under the old Act and the commencement of the amending Act. The Legislature has given to Section 18 of the Finance Act, 1956, only a limited retrospective operation, i.e., up to April 1, 1956 only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the Legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income Tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided, become barred."

In *J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt*, , the three-Judge Bench of the Supreme Court held as follows :

"The principle is based on the well-known rule of interpretation that, unless the

terms of the statute expressly so provide or unless there is a necessary implication, retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by efflux of time."

In *Commissioner of Income Tax v. Panampunna Estates* 1997 KLJ 413, a division Bench of this Court had occasion to consider the amendment of Section 35(2) of the Agricultural Income Tax Act. Section 35(2) before its amendment provided that no order of assessment u/s 18 or reassessment under Sub-section (1) of Section 35 shall be made after the expiry of the three years from the end of the year in which the agricultural income was first assessable. The assessment order was passed on March 29, 1976. So, it was barred under the unamended Act and subsequently by Act 13 of 1976, the period was extended by five years. The question arose whether the assessment was valid or not. The Bench followed the decisions in *S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company*, and *J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt*, and held that "by that time, as mentioned earlier, by applying the three years rule period for completing assessment was already over. Subsequent amendment cannot give the power of assessment to the officer in respect of an year for which the assessment has already become barred". In *Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others*, the question of retrospective of an enactment was considered and it was held as follows :

"Applying the Golden Rule of construction as stated by this Court in *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, in the amending Act there was nothing to show that the Act would have retrospective effect. As "the essential idea of a legal system is that current law should govern current activities". We hold that rate of compensation shall have to be determined in accordance with the provisions of the Act which was in force at the time compensation was payable, i.e., unamended Sub-section (4) of Section 25 of the Act would apply. Moreover, the amending Act affects the substantive right of the appellant, therefore, it would have prospective operation. There is also no express or implied provision in the amending Act to indicate that the Act will have retrospective effect. We, therefore, hold that the amending Act would apply prospectively."

16. Learned Government Pleader cited, in support of his contention, the decisions reported in *Usha Aravind v. Sales Tax Officer, Mattanchery* 1994 KLJ 348, *Commercial Tax Officer and others Vs. M/s. Biswanath Jhunjhunwala and another*, and *Addl. Commissioner (Legal) and Another Vs. M/s. Jyoti Traders and Another*, In *Usha Aravind v. Sales Tax Officer, Mattanchery* 1994 KLJ 348, *Viswanatha Iyer, J.*, held as follows :

"The Legislature has not taken note of the delay that has occurred in the completion of the assessments and therefore the completion of the assessments which were pending as on 1st April, 1993 has to be done within a period of four years from the date of publication of the Kerala Finance Act, 1993."

The learned Judge, according to us, has not taken note of the cases where this Court has held that in case the assessments are unduly delayed, they are to be quashed and the judgment has not considered whether such barred proceedings will be revived. In *Commercial Tax Officer and others Vs. M/s. Biswanath Jhunjhunwala and another*, the question before the Supreme Court was whether the amendment of Rule 80(5)(ii) of the Bengal Sales Tax Rules, 1941 was retrospective or not. Under Rule 80(5)(ii) as stood before amendment, the Commissioner did not have on his own motion any assessment made or the order passed under the Act, if the assessment had been made or the order passed more than six years (sic) previously. This was amended by stating that if the assessment has been made or an order has been passed more than six years previously by a, notification dated March 30, 1974. The argument advanced in that case was that the rule was applicable only from March 30, 1974. But, as a matter of fact, the notification stated that this amendment was brought into force with effect from November 1, 1971. It was in that view that the Supreme Court held that even though under the unamended rules the assessments had become final, because of the retrospective effect given under the notification the assessments could be reassessed by the Commissioner. In paragraph 13 of the above decision, it was observed by the court thus :

"Put conversely, with effect from November 1, 1971, Rule 80(5)(ii) permits the Commissioner (or other authority) to revise of his own motion any assessment made or order passed under the Act or the rules provided the assessment has not been made or the order passed more than six years previously. This being the plain meaning, the said notification must be given full effect. Full effect can be given only if the said notification is read as being applicable not only to assessments which were incomplete but also to assessments which had reached finality by reason of the earlier prescribed period of four years having elapsed. Where language as unambiguous as this is employed, it must be assumed that the Legislature intended the amended provision to apply even to assessments that had so become final ; if the intention was otherwise, the Legislature would have so stated."

Addl. Commissioner (Legal) and Another Vs. M/s. Jyoti Traders and Another, is also a case where the question of limitation was considered. There is a change of law of limitation. According to us, the decision in the case was given on the basis of the particular facts of the case and the provisions of the enactment. This will be clear from the following observations in that case :

"Under Sub-section (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this section no order for any assessment year shall be made after the expiry of 4 years from the end of such year. However, after the amendment, a proviso was added to Sub-section (2) under which Commissioner of Sales Tax authorises the assessing

authority to make assessment or reassessment after the expiration of 4 years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force with effect from February 19, 1991."

17. Thus on a review of the entire decisions, we are of the view that the second proviso to Section 17(6) of the Act can apply only to those assessment proceedings, which have been pending before the assessing authority for a reasonable time. Any assessment proceedings, which were pending before the assessing authority for an unreasonably long time on the date on which the Finance Act, 1993 came into force will not be saved automatically by the amendment. Learned counsel for the petitioner argued that that it is only those assessments which have been pending for not more than four years on April 1, 1993 could be saved by the second proviso. We don't accept this argument. It is true that by the amendment, the time of four years has been fixed. That does not mean that only those assessments which were pending for four years and less could be continued. Prior to the amendment, there was no time-limit prescribed. The only duty on the part of the assessing authority was to complete the proceedings in a reasonable time. Reasonable, time can be judged only after looking into the entire facts of the case. Thus, we cannot lay down as a rule of law that proceedings, which have been pending before the assessing authority for more than four years prior to April 1, 1993 cannot be continued under the proviso. It is also not necessary for us to go into the question as to whether the assessee can be compelled to produce the account books after a period of four years, since on the facts of this case, we have found that the assessment proceedings were pending for an unreasonably long time. Hence, we have to quash exhibits P1, P4, P5(a), P5(b) and P5(c) with regard to the assessment years 1974-75 to 1976-77.

18. In the result, we quash exhibits P1, P4, P5(a), P5(b) and P5(c). Original petition is allowed.

Order on C.M.P. No. 32187 of 1993 in O.P. No. 17807 of 1993 dismissed.